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No. 913

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

INTERNATIONAL ASSOCIATION OF MACHINISTS, ETC.,

Petitioners,

vs.

THE JEFFREY GALION MANUFACTURING CO.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above case on September 3, 1965.

OPINIONS BELOW*

The proceedings before the District Court for the Southern District of Ohio, Eastern Division, is unreported and appears in the transcript of the record.

The opinion of the Court of Appeals for the Sixth Circuit is reported at 350 F. 2d 512, and appears herein in the Appendix.

Reference in this petition to "App. -a" is to the page number in the appendix of plaintiffs-appellants in the Court of Appeals.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit of which review is sought, was entered on September 3, 1965.

An order extending time to file petition for writ of certiorari, dated December 1, 1965, extended time for filing to January 14, 1966.

Jurisdiction of this Court to review the said judgment of the United States Court of Appeals for the Sixth Circuit by writ of certiorari is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

(1) Whether the provision in a collective bargaining agreement between a labor union and an employer, providing for arbitration of grievances, has been met when an arbitration award rendered under that agreement has been vacated, set aside, and held for naught by judicial decree and no further arbitration award is rendered.

(2) Whether a state court judicial finding that an arbitrator's award under a collective bargaining agreement is unenforceable because it is too vague also goes to the merits of all questions submitted to the arbitrator which then become res adjudicata in a proceeding to enforce arbitration of an unresolved grievance.

(3) Whether a federal court reviewing the effect of a judgment entry by a state court vacating an arbitration award to determine its effect upon the arbitrability of the grievance, can go behind the judgment entry, examine the opinion of the state court and of the arbitrator and decide upon the *merits* of the grievance.

STATUTE INVOLVED

The statutory provision involved is Section 301 (a) of the Labor Management Relations Act, 1947, 29 U.S.C. Section 185, which reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT

Petitioner, a labor union representing certain employees of respondent as a duly certified collective bargaining representative, filed a grievance on behalf of those employees and under the contract provisions. That grievance proceeded to arbitration, was submitted and a ruling and decision handed down. Respondent employer then filed its petition to vacate the award, in the Court of Common Pleas of Franklin County, Ohio, the case was argued to the court and a decision rendered in the form of an opinion, duly docketed as a journal entry, as follows:

> This cause having come on to be heard before the Court, jury having been waived by the parties, upon the issues joined in the pleadings, the evidence and the arguments and briefs of counsel;
> The Court finds, upon the issues joined, in favor of the Plaintiff and against Defendants.
> It is therefore ordered, adjudged and decreed that the award of Mitchell H. Shipman, dated November 12, 1958, made in an arbitration proceeding between the Plaintiff and Defendants, described in the Petition of Plaintiff herein, shall be, and it hereby is, vacated, set aside and held for naught, and that Plaintiff recover from Defendants its costs herein expended.

Since an award that is vacated, set aside, and held for naught is no longer an award, leaving the parties to the grievance without an arbitration award and with the grievance still unresolved, demand was made upon the employer for arbitration, which was refused. Petitioner sought relief under Section 301 of the Labor Management Relations Act, 1947. (Title 29, U.S.C.A. Sec. 185), in the District Court. Upon defendant's motion for summary judgment the District Court found for the defendant. (App.-a 62a)

The court below affirmed the decision of the District Court, examining the reasoning behind the opinion of the judge of the state court and approving it. This was never in issue under Section 301, since this was not an appeal from the decision of the state court. While petitioners do not admit that the state court was correct in going behind the arbitration award and attacking the opinion, they do admit that the state court had authority under the Ohio statute on arbitration (App.-a 48-49a) to vacate the award because of the arbitrator's failure to fix the monetary amount of the award. If federal substantive law were to be applied, the state court should have remanded to the arbitrator to make the award definite, and should have refrained from attacking the award on the basis of the arbitrator's own opinion. However, since the state court had color of authority to vacate the award, it was not deemed advisable to appeal through the state judicial system but the award was regarded by petitioners herein as voided and the grievance as unresolved, and demand for arbitration again made.

It is the rule in Ohio that courts speak through their entries. (*Andrews v. Board of Liquor Control*, 164 Oh. State 275, 131 N.E. 2d 390; *Boyle v. Public Adjustment & Construction Co.*, 93 N.E. 2d 795; *Ohio, Ex. Rel. Ruth v. Hoffman*, 82 Oh. App. 266, 80 N.E. 2d 235.) The Ohio court

entry vacated the arbitration award. It said nothing relative to the merits of the grievance or whether the employer had or had not violated the provisions of the collective bargaining agreement. Since this part of the Ohio court's opinion could not be reached on appeal there has been in effect no arbitration and that part of the opinion which was in effect obiter dictum was not res adjudicata to bar the order to arbitrate sought under Section 301 of the Labor Management Relations Act.

REASONS FOR GRANTING THE WRIT

(1) The decision of the court below is in conflict with the decision of this court in *Steelworkers v. Warrier & Gulf Navigation Co.*, 363 U.S. 574. The dispute is arbitrable under the collective bargaining agreement and no valid and subsisting arbitration award exists covering the grievance. Also in conflict is *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, because the court below undertook to determine the merits of the grievance under the guise of interpreting the arbitration clause of the contract. In going behind the decree of the Ohio court and examining the trial judge's opinion in the light of the arbitrator's award, the court below placed itself in the position of overruling the arbitrator because their interpretation differed from his. Also in conflict is *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, holding that the rule forbidding resubmission to the arbitrator should not be applied in labor cases.

(2) The question presented is of importance in the admission of arbitration cases under collective bargaining agreements. Unless all cases similar to this are to be removed from the state court to the federal court, parties to such agreements must know whether federal substantive law is to be applied at all levels of the judicial system. If

an award can be vacated and held for naught by a state court and still be held to be a valid and subsisting award for the purpose of barring enforcement of the arbitration clause of a collective bargaining agreement, under Section 301 of the Labor Management Relations Act, removal to the federal courts is the only prudent course for a party who wishes to defend an award in his favor.

(3) Although the Ohio Court of Common Pleas had authority to modify or amend the arbitration award, it did not do so, leaving the award vacated, null and void, and of no effect. If a null and void award is to be the only fruit of a labor grievance, then a vital question is presented concerning the effectiveness of any arbitration clause in a collective bargaining agreement. Despite a journal entry that states the award is vague and unenforceable, the trial court did not seek to correct the award or order it remanded for correction. Leaving the parties with no award on the merits of the grievance is chaotic and dangerous, and it is the purpose of Section 301 of the Act to avoid this condition. It should be the purpose of the federal courts to effectuate the purposes of the Act.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RUSSELL H. VOLKEMA,
Counsel for Petitioners.

APPENDIX A

No. 16003

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

International Association of Machinists and Local Lodge No. 1038, International Association of Machinists, Plaintiffs-Appellants, vs. The Jeffrey Galion Manufacturing Company, Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Ohio, Eastern Division.

(Decided September 3, 1965.)

Before: Phillips and Edwards, Circuit Judges, and McAllister, Senior Circuit Judge.

McAllister, Senior Circuit Judge. This is an appeal from a decision of the district court granting a motion for summary judgment in favor of appellee company.

Appellant labor union brought suit under the Labor Management Relations Act, Title 29 U.S.C.A., Section 185 et seq., asking the court to compel appellee, The Jeffrey Galion Manufacturing Company, to submit grievances arising out of a collective bargaining agreement to an impartial arbitrator, under the provisions of the agreement. The grievances sought to be arbitrated were known as Grievance 189-57, and Grievance 32-58.

Grievance 189-57 stated that men in Department 40-42 were being laid off more than five days in one month in violation of the collective bargaining agreement.

Grievance 32-58 stated that Henry Weber was laid off for 53.5 hours on temporary layoff during one month, which

was 13.5 hours more than allowed by the bargaining agreement.

These two grievances were based upon an alleged violation of Article IX, Section 8, of the bargaining agreement.*

Upon denial by the company that it had violated the collective bargaining agreement, the two Grievances, 189-57 and 32-58, were submitted to an impartial arbitrator who was agreed upon by both parties.

There is a considerable history of litigation behind the present case. When the company was charged with the violation of the collective bargaining agreement by the union, the two Grievances, 189-57 and 32-58, were, as above mentioned, submitted to an impartial arbitrator who was agreed upon by both parties.

After a hearing, the arbitrator found that the provision of the collective bargaining agreement governing temporary layoffs was not applicable to the claimed grievances filed, and that it had not been violated by appellee company.

After having specifically found that appellee company had not violated the bargaining agreement provision with regard to temporary layoffs, the arbitrator then proceeded beyond the issue before him, and made an award of earnings in favor of grievants based upon contractual provisions and contentions which were not within the submission.

Because of the fact that the arbitrator's award was based on contractual provisions and contentions which were not submitted to him, and that the provision upon which the grievances were based was not violated by the appellee company and was not applicable to such grievances, appellee company filed a petition to vacate the award of the

* Section 8 of Article IX of the Agreement reads as follows:

"Temporary Layoff. In case of a temporary layoff for lack of work for a period not to exceed five (5) working days per calendar month due to manufacturing irregularities, such layoff may be made without regard to seniority."

arbitrator in the Court of Common Pleas of Franklin County, Ohio.

After a hearing and the submission of briefs, Judge Henry Holden of the Court of Common Pleas found in favor of the company and against the union, declared void the award of the arbitrator, and ordered it vacated.

In reply to contentions of appellant union, it is to be said that it is clear that the Court of Common Pleas of Ohio had jurisdiction to enter the judgment vacating the award, under Ohio Revised Code, Section 2711.01 et seq. Moreover, state courts have concurrent jurisdiction with federal courts in matters involving enforcement of collective bargaining agreements. *Smith v. Evening News Assn.*, 371 U.S. 195.

In his opinion and decision, Judge Holden held that the award of claimed loss of earnings by the employees, made by the arbitrator, was void. In the judgment entered by Judge Holden, it was stated that the court found, upon the issues joined, in favor of the company and against the union.

The principal issue before Judge Holden was whether or not the arbitrator exceeded his powers and authority in making the award. Appellee company contended that "the arbitrator, in violation of law and the said [bargaining] Agreement, exceeded his powers and authority, went beyond the issue before him and made an award in favor of grievants based upon contractual provisions and contentions not within the submission." Further, appellee company contended that the arbitrator found in favor of the company on the only issue raised by the grievances, holding that Section 8 of Article IX of the collective bargaining agreement, on which the grievances were based, was not applicable and had not been violated by the company.

Appellant union, however, in its answer, denied that the "arbitrator went beyond the issue before him" or that the "arbitrator exceeded his powers."

Judge Holden, therefore, in finding in favor of appellee company on the issues joined, stated (1) that the arbitrator had exceeded his powers and authority and went beyond the issues submitted to him when he made an award based on contractual provisions and contentions not within the submission, and (2) that the provision of the collective bargaining agreement between the company and the union, upon which the grievances were based, was not applicable and had not been violated by appellee company.

Appellant union moved for a new trial in the Court of Common Pleas of Franklin County, Ohio, and this motion was denied by Judge Holden. The union then moved to modify the judgment, which was also denied by Judge Holden.

The present suit in the district court was commenced by the union against the company to compel arbitration by the company of the same grievances that had been before the arbitrator and the Ohio Court of Common Pleas.

In answer to the suit of the union to compel arbitration, appellee company pleaded res adjudicata and estoppel by judgment; and moved for a summary judgment, which the district court granted.

On appeal, the union contends that it was entitled to an order from the district court compelling the appellee company to "*Re-arbitrate* the Grievances in Question." This claim is advanced upon the ground that the order of the Court of Common Pleas, "in vacating and completely setting aside the arbitrator's award leaves unfulfilled the Defendant's obligations under the Contract."

As has been observed, however, the Court of Common Pleas not only set aside the money award made by the ar-

bitrator in favor of the grievants on the ground that the arbitrator had exceeded his powers and went beyond the issues submitted to him, but the court also determined that appellee company had not violated the provision of the collective bargaining agreement upon which the grievances were based. Under these circumstances, appellant union is not entitled to have a *re-arbitration* of the same grievances based upon the same provision of the collective bargaining agreement, which have already been determined by an Ohio court of competent jurisdiction.

The district court properly considered that the determination of the Ohio Court of Common Pleas was res adjudicata; and the entry of the summary judgment is, accordingly, affirmed.